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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: October 11, 2013

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RE: IN THE MATTER OF THE APPLICATION OF CONTERRA ULTRA BROADBAND, LLC FOR A CERTIFICATE OF CONVENIENCE TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20869A-12-0499)

Attached is the Staff Report for the above referenced Application. The Applicant is requesting approval to provide the following services:

- Cellular Backhaul Transport (Carrier Grade Ethernet or TDM Connectivity and Transport)
- Access Networks and Broadband Networks (Carrier Grade Ethernet and Voice Connectivity Transport)

Staff is recommending approval of the Application with conditions.

SMO:PJG:red\MAS

Originator: Pamela J. Genung

Attachment: Original and thirteen copies

Arizona Corporation Commission
DOCKETED

OCT 11 2013

DOCKETED BY	<i>[Signature]</i>
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DOCKET NO. T-20869A-12-0499

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

CONTERRA ULTRA BROADBAND, LLC

DOCKET NO. T-20869A-12-0499

IN THE MATTER OF THE APPLICATION OF
CONTERRA ULTRA BROADBAND, LLC FOR A CERTIFICATE OF CONVENIENCE
TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES

OCTOBER 11, 2013

STAFF ACKNOWLEDGMENT

The Staff Report for Conterra Ultra Broadband, LLC, Docket No. T-20869A-12-0499, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide Cellular Backhaul Transport (Carrier Grade Ethernet or TDM Connectivity and Transport) and Access Networks and Broadband Networks (Carrier Grade Ethernet and Voice Connectivity Transport).

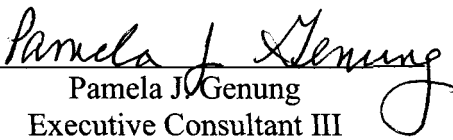

Pamela J. Genung
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1. INTRODUCTION

On December 27, 2012, Conterra Ultra Broadband, LLC (“Conterra” or “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide Cellular Backhaul Transport (Carrier Grade Ethernet or TDM Connectivity and Transport) and Access Networks and Broadband Networks (Carrier Grade Ethernet and Voice Connectivity Transport) within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

In its Application, Conterra provides the following information and description of Conterra’s services that it proposes to provide in Arizona. Conterra proposes to offer Cellular Backhaul Transport¹ and Access Networks and Broadband Networks for K-12 educational, healthcare, and government entities.² Each network is customized to a specific customer’s needs and requirements and is not available to the general public through retail sales by Conterra. Conterra will provide telecommunications services in Arizona primarily using its own facilities. However, Conterra may lease services or dark fiber from other carriers where it is more cost-effective to do so.³

Conterra was established in 2001 and is headquartered in Charlotte, North Carolina. Conterra is a foreign limited liability company organized under the laws of the jurisdiction of South Carolina. The Applicant conducts business under the following affiliate names: Conterra Broadband; Conterra Telecom Services; Conterra Telecom Solutions; Conterra Wireless Broadband, LLC; Conterra Fiber Solutions; Conterra Backhaul Solutions; and Conterra Broadband Services of California. Conterra and its affiliates are comprised of 71 employees. The seven members of Conterra’s management team average over 23 years’ experience each in the telecommunications industry.

Conterra does not plan to establish a customer service center in Arizona nor does it plan to have employees in Arizona. Conterra intends to provide customer service to its Arizona customers through its Customer Service Center which is located within its corporate

¹ Carrier Grade Ethernet or TDM Connectivity and Transport from a wireless carrier mobile switching center or from a lower profile connection point [e.g. telecommunications tower, Point Of Presence (“POP”), or carrier hotel]. Conterra supplies customer specified transport bandwidth from site A to Z. (See Application at Attachment C).

² Carrier Grade Ethernet and Voice Connectivity Transport from the Public Switched Telephone Network (“PSTN”) or Ethernet-POP provided to K-12, healthcare, and government entities. These broadband networks are defined as Wide Area Networks (WANS) and are not available directly to the public through Conterra. (See Application at Attachment C.)

³ Conterra’s Responses to Staff’s Third Set of Data Requests, dated July 5, 2013, at PJG 3.7.

headquarters in Charlotte, North Carolina.⁴ Conterra's customer service personnel will be available 24X7 via a toll-free customer assistance number of 800-634-1274.

Conterra indicated that it has been authorized to provide telecommunications services in seven (7) states/jurisdictions.⁵ In addition to those seven (7) states/jurisdictions, Conterra also provides services, but does not hold a certificate in seven (7) other states⁶, as the services Conterra provides in those states are not regulated, and therefore no application is necessary. Conterra also has pending applications to provide telecommunications services in eight (8) states.⁷ Staff has contacted twelve (12) of the twenty (20) Public Utility Commissions representing each of these states/jurisdictions. Based on the responses received, Staff was able to validate the authorization statuses provided by Conterra and that no complaints have been filed against Conterra. A search of the Federal Communications Commission website found that there have been no complaints filed against Conterra. Based on the above information, Staff believes Conterra possesses the technical capabilities to provide the services it is requesting the authority to provide.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On May 6, 2013, the Applicant provided unaudited consolidated financial statements of Conterra Ultra Broadband Holdings, Inc., Conterra's Parent Company, under a protective agreement for year-ended December 31, 2012. These financial statements list total assets of \$84,993,594; total equity of \$32,497,300; and a net loss of \$1,208,334 for the year-ended December 31, 2012. On June 5, 2013, the Applicant provided audited consolidated financial statements of Conterra Ultra Broadband Holdings, Inc. under a protective agreement for year-ended December 31, 2011. These financial statements list total assets of \$77,120,607; total equity of \$32,924,300; and a net loss of \$1,007,380 for the year-ended December 31, 2011. The Applicant noted that it will rely on the financial resources of its Parent Company.

The Applicant stated in its proposed Tariff (reference Section 2.11 on Original Sheet No. 17 of Conterra's proposed Arizona Corporation Commission Tariff No. 1) that it does not collect deposits from its customers. Additionally, in Section 2.12 on Original Sheet No. 17, Conterra states that it may collect an advance payment of one (1) month's estimated charges from customers that Conterra feels is necessary. The advance payment will be applied against the next month's charges and if necessary a new advance payment will be collected for the next month.

⁴ See Conterra's Responses to Staff's First Set of Data Requests, dated May 6, 2013, at PJG 1.4 and Conterra's Responses to Staff's Second Set of Data Requests, dated June 5, 2013, at PJG 2.2.

⁵ See Application at (A-19) and Conterra's Responses to Staff's Third Set of Data Requests, dated July 5, 2013, at PJG 3.1, states include: California, Florida, Georgia, New Mexico, North Carolina, Virginia, and Texas.

⁶ See Application at (A-19) and Conterra's Responses to Staff's Third Set of Data Requests, dated July 5, 2013, at PJG 3.1, states include: Kansas, Maine, Michigan, Pennsylvania, Utah, Vermont, and West Virginia.

⁷ See Conterra's Responses to Staff's Third Set of Data Requests, dated July 5, 2013, at PJG 3.1, states include: Alabama, Arkansas, Florida, Mississippi, North Carolina, Oklahoma, South Carolina, and Tennessee. Florida and North Carolina are for authorization to provide additional telecommunications services beyond Conterra's currently approved authorization.

4. ESTABLISHING RATES AND CHARGES

The Applicant will be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. Conterra indicated that it expects its net book value or fair value rate base of its Arizona jurisdictional assets to be \$583,906 at the end of the first twelve months of operation. The rate to be ultimately charged by the Company will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

The rates proposed in this filing are for competitive services. Conterra does not provide dial tone service to retail end user customers. Conterra provides Wide Area Network services and cell tower backhaul telecommunications services and proposes to offer customized services to meet the individual needs of carrier customers in Arizona. Conterra's customers are all large, sophisticated wireline and wireless carriers, educational, healthcare, and government entities that require bandwidth intensive, carrier-grade data, voice and voice transport who negotiate contract rates on an individual case basis ("ICB") with Conterra. These large carriers and entities have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services.

Staff has reviewed the maximum/actual rates to be charged by the Applicant. Conterra's rates are for services that have been previously classified as competitive by the Commission. Although both an actual rate and a maximum rate may be listed for each competitive service offered, Conterra's proposed tariff contains actual rates that equal the maximum rates. The proposed tariff rates are similar to those charged by Conterra in other states and are similar to the tariffed rates of other carriers in Arizona. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. Therefore, Staff believes that Conterra's proposed rates are just and reasonable.

5. REVIEW OF COMPLAINT INFORMATION

The Applicant has neither had an Application for service denied nor had a CC&N revoked in any state. There have not been any civil or criminal proceedings against the Applicant. The Corporations Section has indicated that Conterra is in good standing and the Consumer Services Section reports no complaints have been filed in Arizona from January 1, 2010 to July 30, 2013.

The Applicant certified that none of its officers, directors or partners has been involved in any civil or criminal investigations. The Applicant also indicated that none of its officers, directors or partners had been convicted of any criminal acts within the last ten years.

In response to item (A-11) of its Application, Conterra provided information pertaining to a compliance investigation conducted in 2008 by the Florida Public Service Commission ("FPSC") regarding Conterra Wireless Broadband's failure to comply with Florida Statutes, Section 364.336, which requires certificate holders to pay a minimum annual regulatory assessment fee. Conterra indicated that upon receipt of the FPSC's Order, dated August 11, 2008, Conterra paid all outstanding monies owed. In Response to Staff's First Set of Data Requests, in Exhibit PJG 1.10, Conterra provided additional documentation indicating that the FPSC's docket and compliance investigation was completed and closed on September 15, 2008.

6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

6.1 Private Line Services

Conterra proposes to provide private line services in Arizona.⁸ Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 A Description of the General Economic Conditions That Exist That Make the Relevant Market for the Service One That is Competitive.

IXCs, ILECs and CLECs each hold a substantial share of the private line market. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with the existing providers of the service in order to obtain customers.

6.3 The Number of Alternative Providers of the Service.

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

6.4 The Estimated Market Share Held by Each Alternative Provider of the Service.

IXCs, ILECs and CLECs each hold a substantial share of the private line market.

⁸ See Conterra's Response to Staff's First Set of Data Requests dated May 6, 2013 at PJG 1.2.

6.5 The Names and Addresses of Any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, as Defined in A.A.C. R14-2-801.

Conterra does not have any affiliates that are alternative providers of private line service in Arizona.

6.6 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms and Conditions.

IXCs, ILECs and CLECs have the ability to offer the same services that the Applicant has requested in their respective service territories.

7. RECOMMENDATIONS

Staff recommends that Conterra's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
4. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
5. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from Conterra indicating that the net book value of its Arizona assets at the end of the first twelve months of operations is expected to be \$583,906. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other wholesale transport providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
6. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.